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PROJECT NO. 53140

**REVIEW OF TEXAS UNIVERSAL
SERVICE FUND**

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**PUBLIC UTILITY COMMISSION

OF TEXAS**

**TEXAS TELEPHONE ASSOCIATION’S INITIAL COMMENTS IN RESPONSE TO
THE COMMISSION STAFF’S QUESTIONS FOR COMMENT**

The Texas Telephone Association (“TTA”) respectfully submits these initial comments in response to the request on March 11, 2022, by the Public Utility Commission of Texas (“Commission” or “PUCT”) for comment on five questions regarding whether the Public Utility Regulatory Act (“PURA”) § 56.032, as amended by Senate Bill (“SB”) 586 (2017), including 16 Texas Administrative Code (“TAC”) § 26.407, which was adopted to implement that section, together accomplish the purposes of the establishment of the Texas Universal Service Fund (“TUSF” or the “Fund”) under PURA § 56.021(1)(B) and allow each small provider, as defined by PURA § 56.032, the opportunity to earn a reasonable return in accordance with PURA §53.051, and should be continued; or whether (2) changes in law to amend or replace the mechanism created by SB 586 are necessary to accomplish the purposes described in the bill.

These initial comments are timely filed on or before the April 8, 2022, deadline.

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I. Executive Summary

SB 586, passed by the Texas Legislature and signed by the Governor in 2017, provided for a two-part mechanism to ensure long-term, regulatory-efficient, needs-based TUSF support for the small and rural incumbent local exchange carriers (“ILECs,” or, here, “small providers”) serving rural Texans with quality communications services.¹

This legislation has been remarkably effective in accomplishing its procedural purposes:

- First, SB 586 enables significant, recurring annual scrutiny of small providers’ expenses, revenues, and investments. Forty-three of the 44 eligible small providers opted into the scrutiny required by this bill,² so the Public Utility Commission of Texas (“Commission” or “PUC”) now receives annual reports of unprecedented scope from these small providers—tens of thousands of pages of detailed annual reports and supporting material so far, longer than the PUC reviews for any other industry. This gives the agency unprecedented visibility into their expenses and operations to ensure TUSF support is being used properly.³
- Second, SB 586 enables streamlined support and/or rate adjustments. The PUC also now has a means to adjust small providers’ support and/or rates without the high cost and time burden of full rate cases, ensuring the proper amounts of TUSF support are authorized, and it has done so 23 times so far.⁴

These efficient processes were intended to provide funding stability for continued investment in rural Texas communications infrastructure for years to come.⁵ However, the Commission’s unanticipated 2020 decision to allow a severe TUSF funding shortfall⁶ has frustrated SB 586’s core funding purpose: providing sufficient, needs-based TUSF support for

¹ See Senate Research Ctr, Bill Analysis, Tex. S.B. 586, 85th Leg., R.S. (May 24, 2017) (setting out the bill’s purpose).

² See Appendix 1, a chart which lists the 43 participating small providers and their annual report projects, organized by earnings category as set forth in SB 586, for the four calendar years for which annual reports have been filed so far.

³ See Balhoff, Michael J. and Bradley P. Williams, *Maintaining Universal Service in Texas* (Feb. 2021), available at http://interchange.puc.texas.gov/Documents/50796_54_1121099.PDF (“2021 TUSF Expert Report”) at 6 (noting “The PUC’s ability to manage the TUSF is at an all-time high,” that the “New annual reports provide unprecedented detail,” and that as a result the small providers are “highly accountable”).

⁴ See Appendix 2, a chart which lists small providers and their adjustment proceeding dockets, for the four report years on which the adjustment proceedings have been based. Note in addition to the 23 resolved proceedings, there are three pending based upon 2020-reported data at this time.

⁵ 2021 TUSF Expert Report at 6 (“...[T]here continues to be a need for TUSF. The policy and mechanisms assure service in rural and high-cost areas of the state that would not otherwise have service as those regions are uneconomic-to-serve without TUSF support”), and at 14 (“USF is not a temporary assistance or subsidy but is an enduring mechanism to properly allocate network costs across the broader universe of customers—for the benefit of all customers, not companies”).

⁶ Project No. 50796, *Review of TUSF Rate*, Open Meeting Discussion (June 12, 2006); Amendment No. 1 to Contract No. 473-19-00006 between the Public Utility Commission of Texas and Solix, Inc., Art. 3(d) (Dec. 17, 2020), available at https://www.puc.texas.gov/agency/resources/reports/fiscal/contracts/473-19-00006_SolixTUSF.pdf.

rural Texans. The first SB 586 support adjustment was just approved in January of 2020.⁷ Less than a year later, the PUCT cut disbursements to only about 30% of the TUSF support it had determined that small providers needed.⁸ In other words, small providers are spending time and incurring costs to comply with SB 586’s procedural requirements, but are not currently receiving even 30% of the funding SB 586 was supposed to review, approve, and stabilize.

One need only look at the hundreds of annual report projects on file at the Commission—and the extensive discovery PUCT Staff has submitted in those proceedings—to know that SB 586 has been a procedural success. The PUCT is using the new law to ensure compliance with state and federal rules, just as it was supposed to. But with less than a year of full funding for SB 586 support adjustments, SB 586 should be continued at least until TUSF funding is restored to intended levels so the law can work under appropriate circumstances before its impacts are fully analyzed. The PUCT must comply with the orders it has issued under SB 586 for a meaningful amount of time before the Legislature can determine whether the law is encouraging robust rural infrastructure investments. The current TUSF funding crisis is curtailing that core purpose.⁹

II. General Comments and Introduction

A. A Core Purpose of SB 586 Was to Provide Long-Term, Efficient, Needs-Based TUSF Support

In 2017, the Texas Legislature passed SB 586 to preserve certain TUSF support at then-existing levels so that small providers could continue serving Texans in rural areas with reasonably priced, reliable telecommunications services without the need for dozens of simultaneous rate cases. In return for preserved TUSF support, 43 of 44 eligible small providers—all small companies or cooperatives that already bore Provider of Last Resort (“POLR”) and other costly service obligations throughout their rural service territories, and already filed annual earnings and other reports at the PUCT—opted into *additional* regulation under SB 586.¹⁰ Despite their comparatively small sizes, they now file lengthier, more detailed annual reports than the Commission receives in any industry it regulates.¹¹

This information, combined with extensive discovery (an average of 65 requests for information (“RFIs”) about annual report filings answered per company so far), provide incredible detail tracking each dollar spent by small providers to ensure compliance with all applicable federal and state laws. Any stakeholders who previously voiced concerns about how TUSF funds are being spent should be touting the success of SB 586’s oversight.

However, the Legislature’s other stated purpose of the reporting/review and adjustment mechanisms set out in SB 586 was to provide “long-term, regulatory-efficient and ‘needs-based’

⁷ Docket No. 50026, *Application of Eastex Telephone Cooperative, Inc. to Adjust High Cost Support Under 16 TAC § 26.407(h)* (Jan. 22, 2020).

⁸ Solix, Inc. letters (beginning Jan. 7, 2021), *infra* n.25.

⁹ See 2021 TUSF Expert Report at 7 (“Without predictable and sufficient TUSF, there is compelling evidence of the risk that Texans—urban and rural—may no longer benefit from a reliable statewide telecommunications network”).

¹⁰ PURA § 56.032(c); 16 TAC § 26.407(d).

¹¹ Report contents are set forth in 16 TAC § 26.407(e); *see* Appendix 1 for links to filings.

support” for small providers and avoid the imminent need for many “traditional regulatory ‘rate cases’” at the Commission.¹² Predictable support is needed to incentivize long-term communications infrastructure investments in rural areas that are “uneconomic” to serve, where customer revenues alone are too low to support the high cost of providing rural service.¹³ Since SB 586 adjustments have only been funded for about a year, this has not yet happened. In fact, the vast swings in support and the ongoing uncertainty in how much support will be available in any given month are making it difficult, if not impossible, for many small providers to make significant investments in appropriate rural infrastructure.

B. SB 586 Is Accomplishing Its Procedural Purposes

Procedurally, SB 586 has been remarkably effective so far: TUSF funding was preserved in 2017, dozens of simultaneous telephone rate cases were avoided, and the Commission has gained recurring unprecedented visibility into the operations, expenses, and earnings of the 43 small providers that opted to subject themselves to additional scrutiny under this law in return for preserved TUSF support.

In the short time since 16 Texas Administrative Code (“TAC”) § 26.407 was adopted to implement SB 586, the Commission has received *tens of thousands* of pages of verified annual reports and supporting materials documenting each small provider’s expenses, investments, and revenues. These new reports include detailed information never before required with annual earnings reports, account for every dollar a small provider spends, and include multiple verifications that small providers comply with the Federal Communication Commission’s (“FCC”) and the PUCT’s extensive accounting, expense, and other rules. If Commission Staff finds any of a small provider’s expenses to be unreasonable, they will adjust reports accordingly, and the PUCT retains its authority to call in any small provider for rate case if expense questions remain.¹⁴

In addition to the voluminous annual reports, Commission legal and rate staff have obtained sworn responses to *thousands* of RFIs from small providers.¹⁵ Between the reports and the RFIs, the Commission has on an ongoing basis more oversight than ever before over small providers’ operations, expenses, and earnings—all without having to incur the high costs and time burden of fully contested base rate proceedings. Put simply, those who called for greater oversight of TUSF should be thrilled that the processes and procedures set out in SB 586 could result in such

¹² Senate Research Ctr, Bill Analysis, Tex. S.B. 586, 85th Leg., R.S. (May 24, 2017); *see also* Project No. 47669, Rulemaking to Revise 16 Tex. Admin. Code 26.407 Small and Rural Incumbent Local Exchange Company Universal Service Plan (SRILEC USP) Support Adjustments Pursuant S.B. 586 (Oct. 16, 2018) (noting adjustments are to ensure that “support, combined with regulated revenues[,] provides the small ILEC an opportunity to earn a reasonable rate of return under this rule, as required by Senate Bill 586”).

¹³ 2021 TUSF Expert Report at 6 (TUSF is needed to “assure service in rural and high-cost areas of the state that would not otherwise have service as those regions are uneconomic-to-serve” without support).

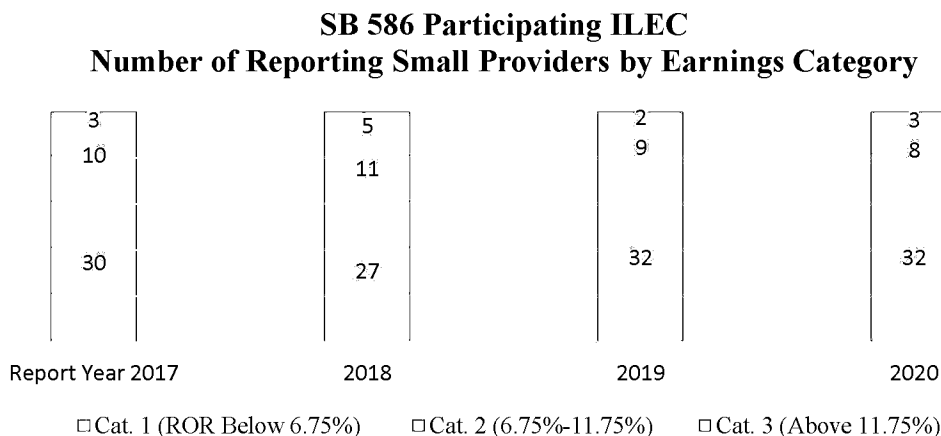
¹⁴ 16 TAC § 26.407(f)(2)(A), especially sub-parts (i-iii); PURA § 56.032(l)(1).

¹⁵ In the projects listed in Appendix 1, Commission Staff have sent the 43 participating companies a total of 2,808 RFIs. Note that these are in addition to 3,630 RFI responses (55 RFIs answered by 66 respondents) that were filed by TUSF recipients in a separate TUSF proceeding in 2020. Project No. 51433, Review of Telecommunications Providers Receiving Texas Universal Service Fund Support Under the Texas High Cost Universal Service Plan and Small and Rural Incumbent Local Exchange Company Universal Service Plan, Staff’s First Request for Information (Oct. 19, 2020).

extensive review, all without the incredible costs and time burdens of individual rate cases, and without reducing any of the PUCT’s other authority to review/regulate small providers.

SB 586 also created a streamlined mechanism to adjust TUSF support. It allows either the Commission or rural providers to request increases (with significant limits) or decreases (without limitation) to a small provider’s TUSF support and/or local rates if a small provider reports intrastate, regulated earnings more or less than a reasonable benchmark range of rates of return (“ROR”) established by the Legislature, currently from 6.75%-11.75%.¹⁶ Small providers bear the burden of proof in these proceedings, and they have to provide written testimony and additional attestations in addition to all the information in their annual reports. These proceedings are contested cases in which third parties could intervene.¹⁷ Applications for support *increases* are limited to 140% of the small provider’s prior twelve months of TUSF support, and can generally only occur every three years, while there is no limit on the size of an application for a support *decrease* initiated by the Commission.¹⁸

So far, 26 such adjustment proceedings have been filed, and the Commission has issued 23 support adjustment orders.¹⁹ In other words, in the four years since 16 TAC § 26.407 was adopted, after a close review of their expenses, and their sworn need for adjusted support, over half of the participating small providers have gone through one round of TUSF support adjustments to better meet support needs of their rural service areas. However, due in part to the 140% cap on increases, on average the initial round of adjustment proceedings has left most applicants under-earning, as shown in Appendix 2. The most recent annual reports reveal that about three-fourths of the small providers continued to earn less than reasonable RORs as of the end of 2020:



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Over time, additional adjustment proceedings should continually move towards “right sized” TUSF support, ensuring that TUSF dollars are devoted to the small providers and rural areas where support is most needed in a regulatory-efficient process. However, Appendix 2 and the

¹⁶ PURA § 56.032(h).

¹⁷ 16 TAC § 26.407(h) (“Contested Case Procedures”).

¹⁸ 16 TAC § 26.407(j)(1)(A).

¹⁹ See Appendix 2.

²⁰ See supporting information in Appendix 1.

chart above indicate that more time is needed for additional adjusting so that SB 586 can accomplish its goal of setting needs-based support for all small providers.

In summary, Texans are benefitting from SB 586 not only in increased transparency in the telephone industry, but also in TUSF support being increasingly directed (on paper, at least) to the areas of the state that need it most. This sort of funding stability *should* incentivize telecommunications infrastructure investments in the most rural/high-cost areas where resources are so desperately needed.²¹

But of course, the SB 586 mechanism has to be funded to create the stability needed to actually fund investment in appropriate telecommunications infrastructure. And currently, although the PUCT is *issuing* orders to adjust TUSF support under SB 586, it is not actually *delivering* TUSF support at those adjusted levels. Thus, small providers are following the extensive procedures of SB 586, but the TUSF funding crisis wholly frustrates the substantive purpose of SB 586: to incent investments in rural Texas through long-term, needs-based support.

C. SB 586 Is Not Accomplishing Its Substantive Funding Purpose Due to TUSF Shortfalls

The PUCT is reviewing SB 586 implementation at this time because the Legislature required that the mechanism implementing SB 586 be reviewed and an agency report be issued about five years after the law went into effect,²² presumably to allow the Legislature to examine the efficacy of the bill after it had been implemented for some time.

Unfortunately, less than two years after 16 TAC § 26.407 was adopted in October of 2018, the then-sitting Commissioners declined to adjust the TUSF assessment rate or mechanism in June of 2019, knowingly allowing a TUSF revenue shortfall.²³ In December of 2019, the Commission created an unprecedented hierarchy among the TUSF programs—one that does not exist elsewhere in Texas statute or agency rules, and one that was drafted behind closed doors with no public input—which put high-cost rural funding as the *last* priority for payment after the shortfall.²⁴ These shocking decisions have resulted in TUSF high-cost support being grossly underpaid, by approximately 70% or more, since January 2021—less than a year after the first SB 586 adjustment proceeding was approved.²⁵ Multiple lawsuits are pending regarding the TUSF shortfall and related underpayments.²⁶

²¹ See 2021 TUSF Expert Report at 6 (noting TUSF “policy and mechanisms assure service in rural and high-cost areas of the state that would not otherwise have service”).

²² This [Project No. 53140](#), Commission Staff’s Request for Comment at 2 (citing SB 586, Section 2).

²³ [Project No. 50796](#), Open Meeting Discussion (June 12, 2020).

²⁴ Amendment No. 1 to Contract No. 473-19-00006 between the Public Utility Commission of Texas and Solix, Inc., Art. 3(d) (Dec. 17, 2020).

²⁵ Solix, Inc. has sent a monthly memo entitled “Notice of Changes to your Texas Universal Service Fund (TUSF) Support Disbursement” to TUSF recipients since January 7, 2021, informing providers what percentage of their authorized high-cost support they will receive that month, typically around 30%.

²⁶ *Public Utility Commission of Texas et al v. AMA Communications, LLC d/b/a AMA TechTel Communications*, Cause No. 03-21-00597-CV, pending before the Third Court of Appeals since Nov. 19, 2021; *Texas Telephone Association and Texas Statewide Telephone Cooperative, Inc., et al v. Public Utility Commission of Texas et al*, Cause No. 03-21-00294-CV, pending before the Third Court of Appeals since June 25, 2021.

The effect of the above is that the SB 586 adjustment mechanism was properly funded for less than a year. Now, because only about 30% of TUSF high-cost support is being disbursed each month, the adjusted support levels set forth in the 23 resolved proceedings cited in Appendix 2 are *not* being disbursed. The small providers—who all continue to meet their reporting requirements and other regulatory service obligations—do not know when or how their TUSF support will be restored. The TUSF shortfall has thus frustrated the core purpose of SB 586, which was to ensure rural Texas’s small providers received sufficient, long-term, needs-based TUSF support.²⁷

D. SB 586 Should Stay in Place with Adequate TUSF Funding So It Can Fulfill Its Statutory Intent

The Legislature planned to review this law’s efficacy after several years of its implementation, but *SB 586 has now been under-funded longer than it was properly funded.*

A reliable, well-maintained wireline telephone network across the state benefits all users of voice services, regardless of what technology they use to access the network, and regardless of whether they live and work in rural Texas or whether they spend most of their time in urban areas and simply call to or travel through rural areas.²⁸ In rural parts of the state where revenues from customers alone cannot support the costs of a network, adequate network investment and maintenance can only occur if sufficient and predictable funding supplements customer revenues.²⁹

SB 586 was intended to preserve and/or set such funding, with extensive safeguards to review/monitor small provider operations in the meantime. The SB 586 processes are working to increase transparency and oversight, but the processes are unable to provide the intended long-term support stability to small providers because it has been so severely under-funded.

This carefully crafted law should be in place for a meaningful period of time after TUSF support is fully disbursed before its impacts are fully reviewed and any changes are considered either to the law or its implementing rule. We recommend that the law be continued and that the review contemplated by this Project be postponed for a later year, so that the Legislature can examine the law’s substantive efficacy after about five years of actual implementation history are established, as was originally intended.

²⁷ See 2021 TUSF Expert Report at 14 (observing the long-term nature of USF, noting it is “not a temporary assistance or subsidy” but rather must be “an enduring mechanism to properly allocate network costs across the broader universe of customers”).

²⁸ *Id.* at 6 (noting that a “universal network ... creates value for all participants on the network”), and at 17 (concluding “TUSF has helped support a robust and well-maintained statewide telecommunications network for the benefit of all residents of the State”).

²⁹ *Id.* at 19 (“[a]s one move to more rural areas, with any network, the costs per user become increasingly high, eventually leading to unsustainable business models...”), and at 20 (“[i]f the TUSF is insufficiently funded, the conclusion ... is that, at best, there will be no economic incentive or rationale for these carriers to continue to invest in uneconomic, high-cost areas”).

III. Specific Comments on Commission Staff's Questions

(1) The continued appropriateness of using the FCC prescribed rate of return³⁰ for the mechanism established under PURA § 56.032(d), if the FCC still prescribes a rate of return that may be used for that mechanism

In considering SB 586's ROR-based process, it is important to remember that if rate cases had to be used in lieu of the SB 586 procedures, then neither the frequency limitations nor the 140% cap on support increases in SB 586 would apply. As shown in the chart above, more substantial and frequent support increases are likely necessary for most small providers to achieve reasonable RORs. In addition, we anticipate the RORs authorized set for small providers on a company-by-company basis through rate cases would be substantially higher than the ROR that is being applied through SB 586.³¹ This is especially true given the historic inflation and rising interest rates reported in recent months.³² Further, the uneven range—wherein 3% less than the target ROR is deemed reasonable, but only 2% above the target is deemed reasonable—is not mutual/equitable. A new, higher target ROR should be considered for purposes of calculating SB 586's reasonable rate of return going forward.

Having said that, it may be appropriate to continue to use a limited range of reasonable RORs based on a relevant source such as the FCC's prescribed ROR of 9.75% for small and rural Texas providers going forward for the following reasons:

- It is consistent and administratively efficient to set one ROR applied equally to all small providers.
- Appropriate rates of return are often one of the most highly contested, and thus costliest, issues in rate cases. Although setting provider-specific RORs would be more precise, litigating provider-specific RORs for over 40 individual small providers would be unduly time consuming and expensive for all parties, especially considering the very small size of many of the providers.

³⁰ SB 586 has actually applied an ROR *lower* than the FCC-prescribed ROR to date. At the time that SB 586 was passed, the FCC was shifting its prescribed ROR from 11.25% down to 9.75% at a rate of 0.25% per year from 2015 to 2021. SB 586 adopted the FCC's ROR, but *not to exceed 9.75%* before 2021. PURA § 56.032(a)(1). As a result, the target ROR utilized for each report year so far from 2017 through 2020 (9.75%) has been *lower* than the FCC's prescribed ROR (which ranged from 10.75% down to 10% during this period). The SB 586 target rate and the FCC's prescribed ROR will be equal for the first time for 2021 reports and going forward.

³¹ 2021 TUSF Expert Report at 20-22 (citing an array of recent studies and data that in the aggregate would support a rate of return on equity for a typical small Texas carriers of 13.32%, well above the high end of SB 586's rate band, and a resulting estimated weighted average cost of capital around 10.22%, above the FCC's current prescribed ROR). Note that RORs for utilities that have monopoly rights to serve in their territories are distinct from RORs for telephone utilities, which have costly POLR obligations in the uneconomic parts of their territories but face competition in other areas

³² The U.S. consumer price index climbed 7% in 2021, the largest 12-month gain since June 1982, according to Labor Department data reported in January of 2022. Meanwhile, the Federal Reserve approved a 0.25% interest rate increase in March of 2022—the first increase since 2018—and warned “ongoing increases” are expected in light of “additional upward pressure on inflation” caused by current global events. See Board of Governors of the Federal Reserve System, Press Release (Mar. 16, 2022), *available at* <https://www.federalreserve.gov/newsevents/pressreleases/monetary20220316a.htm>.

- The procedural advantages of SB 586—the constant monitoring/review of expenses, the efficiencies of streamlined support adjustments—are likely an appropriate trade-off for the lower-than-market RORs.

(2) The efficiency and frequency of adjustment proceedings conducted under PURA § 56.032(h) and § 56.032(i)

Without the limits set forth under PURA §§ 56.032(h) and (i), support and/or rate adjustments proceedings would likely be larger and/or more frequent:

- Adjustment proceedings can be initiated every three years, absent a showing of good cause.³³ In addition to frequency limitations, each adjustment increase is capped at 140% of the prior year’s TUSF receipts.³⁴
- As shown in Appendix 2, the combined impact of these two limitations has been that small providers have generally been left under-earning even after undergoing one adjustment proceeding, several years after the Legislature approved SB 586.
- In other words, but for SB 586’s limitations, these small providers would likely request—and have the sworn documentation establishing a need for—larger and/or more frequent support increases.
- While the net impact of SB 586 adjustment proceedings so far has been to slightly increase total TUSF obligations, as was anticipated, this law is *not* the cause of the current TUSF shortages.³⁵
 - Over four report years, so far, the 23 resolved SB 586 adjustment proceedings have collectively increased the TUSF burden by just over \$1 million/month.³⁶
 - The current TUSF shortfall is about \$10 million per *month*, well beyond any possible impact of SB 586.

(3) The frequency and efficiency of determinations made on reasonable and necessary expenses under PURA § 56.032(d)(4)

Although the reports and the discovery associated therewith are relatively onerous for comparatively small companies and cooperatives, the process for the determinations made

³³ See PURA § 56.032(h). As shown in Appendix 2, 23 PURA § 56.032(h) adjustment proceedings have been resolved to date, 17 based on 2017-reported data, five based on 2018 data, one based on 2019 data, and three currently pending based on 2020 data. So far, no provider has made a good cause adjustment filing sooner than three years after its prior application.

³⁴ See *id.* Assuming SB 586 is continued, it will take a number of years for many small providers to obtain the full amount of authorized TUSF support they need to achieve reasonable RORs under the statute. Obviously, that authorized TUSF support will then also need to be *received* in order to actually realize reasonable RORs.

³⁵ The PUCT has acknowledged that TUSF revenues have declined longer term due to “a declining number of access lines” but that the acute crisis is due to wireless telecommunication companies having “modified the calculation of the assessment to remove costs related to data, which comprise a larger portion of wireless bills than the provision of telecommunication services.” There was a decline in taxable receipts related to telecommunications services of “\$1 billion dollars from 2018 to 2019.” Project No. 50796, Memo from Chairman DeAnn T. Walker (May 13, 2020).

³⁶ The collective annual increase in TUSF among the 17 adjustment proceedings using 2017 data was \$10,520,687. The collective annual increase in TUSF among the five adjustment proceedings from 2018 was \$1,485,063. The annual increase in TUSF from the one adjustment proceeding from 2019 was \$373,491.

regarding the reasonable and necessary expenses of small providers has proven to be efficient as compared to rate cases, and the annual reviews are appropriately frequent, as further explained below:

- The SB 586 annual reports are filed utilizing schedules Staff developed over the course of almost a year with extensive stakeholder input, resulting in robust and detailed annual reports.³⁷
- The reports allow unprecedented transparency. Each provider's annual reports are typically hundreds of pages long, meaning they provide more detail on expenses, earnings, and operations than the Commission ever received before. These are typically longer than the annual reports the Commission routinely reviews for utilities in any of the three industries it regulates.
- Commission Staff very closely reviews and carefully vets the annual reports, and the expense data they include, before making its determinations.
 - To illustrate the depth of the Commission's review, over four report years so far, Commission Staff has sent a total of 2,808 RFIs.³⁸
 - Note that this is in *addition* to 3,630 RFI responses filed by TUSF recipients in Project No. 51433 in 2020.³⁹

(4) The effect of changes in technology on regulated revenue and support needs or determinations made under PURA § 56.032

SB 586's robust mechanisms allow for pertinent technology changes to be reported upon, reviewed, associated expenses considered by Commission Staff, and support to be adjusted accordingly if needed. When considering technological issues, it is important to remember the following aspects of the network:

- There is a dual-use fiber and copper network across Texas.
 - This network is enables both voice telephone and information services.
 - Small providers rely on TUSF to support the voice portion of the dual-use network.
 - Extensive and evolving FCC accounting standards ensure costs are properly separated and allocated so that high-cost TUSF support pays only for intrastate, regulated services—this is what small providers swear to and what Commission Staff reviews in every SB 586 annual report.
 - Without TUSF support, it would not be economically feasible to construct or maintain the wireline network in the most sparsely populated, highest-cost regions of the state.

³⁷ See Project No. 47699.

³⁸ Commission Staff sent 15 RFIs in the 2017 report projects, 362 RFIs in the 2018 projects, 1,240 in the 2019 projects, and 1,191 in the 2020 projects. See Appendix 1 for references and links to the projects.

³⁹ See *supra* n.15.

- All terrestrial technologies utilize the wireline network, which can be installed and maintained in rural areas only with support.
 - Wireless networks rely on landline networks for connection to the public switched telephone network.⁴⁰
 - There is no terrestrial technology available to replace landline service in many rural parts of the state.

(5) Any other relevant information that commenters believe is necessary for inclusion in the report and is in the public interest.

SB 586 has worked well from a process perspective. However, small providers have received only a small fraction of the amounts of TUSF high-cost support that they are due since January 2021, largely frustrating the purpose of SB 586. Therefore, SB 586 should be continued at least until TUSF funding is restored and the law can work for additional time under normal circumstances, as was intended, before it is reviewed.

- The instant study was required because the Legislature asked that the mechanism implementing SB 586 be reviewed and an agency report be issued to the Legislature about five years after the law went into effect to allow the Legislature to examine the efficacy of the bill and its implementation.
- In practice, however, the SB 586 mechanism has not yet had the opportunity to work for close to five years; instead, adjusted support amounts under SB 586 were fully funded for less than *one* year.
 - Unfortunately, less than two years after the rule implementing SB 586 was adopted, the Commission declined to adjust the TUSF assessment rate or mechanism, knowingly allowing a TUSF funding shortfall to develop.
 - Without any means for stakeholder input, the Commission then created a hierarchy among TUSF programs that put high-cost rural funding as the *last* priority for payment.
 - The Commission approved its first SB 586 adjustment in January of 2020, and has approved 22 more since—but the Commission quit fully funding those support adjustments beginning in January of 2021. In other words, the Commission is following SB 586 on paper only, *ordering* support adjustments without *issuing* adjusted support.
 - The crisis has now resulted in over a year of grossly under-paid TUSF high-cost support to all providers, rather than the preserved or adjusted TUSF high-cost support levels guaranteed to providers who opted into regulation under this statute. Although not currently receiving the benefits of SB 586 funding, the 43 small providers that opted into regulation under this bill continue to incur the costs, time, and scrutiny of SB 586 compliance.

⁴⁰ See, e.g., 2021 TUSF Expert Report at 6 (“At best, without the assistance of sufficient TUSF, carriers may be compelled to eliminate telephone service in the most-costly service regions and commit to dramatically reduced network investment. The predictable result will be that customers across large regions of Texas will be left without wireline *and* wireless communications services—that depend on the underlying wireline network—an outcome that is likely to be difficult to reverse in a cost-effective manner in the foreseeable future”).

- The funding crisis has resulted in ongoing litigation now pending before the Third Court of Appeals.
- As cited above, the purpose of SB 586 was to create a regulatory efficient mechanism to ensure every small provider has the opportunity to earn reasonable rates of return, which necessarily include TUSF support due to the uneconomic nature of telephone service in sparsely populated, high-cost areas.
- With the majority of high-cost TUSF unfunded for the past 15+ months, SB 586's purpose is being frustrated. Small providers that rely heavily on TUSF have necessarily had their buildout plans, staffing, and other aspects of their operations affected.
- This carefully crafted bill should have the opportunity to work, *with actual funding*, for several years as planned before the Commission or the Texas Legislature make any changes to its mechanisms, if needed.
- Until such time, rural Texans should enjoy continued access to affordable, reliable communications services resulting from a properly maintained, properly supported telecommunications network. Such a network requires both initial and ongoing investments, and investments in high-cost rural areas require enduring, predictable support.

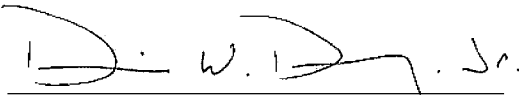
CONCLUSION

TTA appreciates the opportunity to provide input on this crucial matter, and reserves the right to file reply comments as may be appropriate.

Date: April 8, 2022

Respectfully submitted,

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Appendix 1: Summary of SB 586 Annual Report Projects

Report Year	Companies or Coops in Category 1* (Below 6.75% ROR)	Companies or Coops in Category 2* (6.75-11.75% ROR)	Companies or Coops in Category 3* (ROR Above 11.75%)	Average Reported ROR*	Median Reported ROR*
2017	<p>Blossom Telephone Company ("Blossom"), Project No. 49027</p> <p>Border to Border Communications, Inc. ("Border to Border"), Project No. 48996</p> <p>Brazos Telephone Cooperative, Inc. ("Brazos"), Project No. 48997</p> <p>Cap Rock Telephone Cooperative, Inc. ("Cap Rock"), Project No. 48998</p> <p>Coleman County Telephone Cooperative, Inc. ("Coleman"), Project No. 48997</p> <p>Colorado Valley Telephone Cooperative, Inc. ("Colorado Valley"), Project No. 49025</p> <p>Community Telephone Company ("Community"), Project No. 49021</p> <p>Cumby Telephone Cooperative, Inc. ("Cumby"), Project No. 48999</p> <p>Eastex Telephone Cooperative, Inc. ("Eastex"), Project No. 49019</p> <p>ENMR Telephone Cooperative, Inc. ("ENMR"), Project No. 49016</p> <p>Etex Telephone Cooperative, Inc. ("Etex"), Project No. 48983</p> <p>Five Area Telephone Cooperative, Inc. ("FATC"), Project No. 49002</p> <p>Ganado Telephone Company, Inc. ("Ganado"), Project No. 49011</p> <p>Hill Country Telephone Cooperative, Inc. ("HCTC"), Project No. 48992</p> <p>Industry Telephone Company ("Industry"), Project No. 48994</p> <p>La Ward Telephone Exchange, Inc. ("La Ward"), Project No. 49013</p> <p>Mid-Plains Rural Telephone Cooperative, Inc. ("Mid-Plains"), Project No. 48993</p> <p>Muenster Telephone Corporation of Texas dba Nortex Communications ("Nortex"), Project No. 49003</p> <p>North Texas Telephone Company ("North Texas"), Project No. 49004</p> <p>Peoples Telephone Cooperative, Inc. ("Peoples"), Project No. 49005</p> <p>Poka Lambro Telephone Cooperative, Inc. ("PLTC"), Project No. 48988</p> <p>Riviera Telephone Company, Inc. ("Riviera"), Project No. 48986</p>	<p>Alenco Communications, Inc. ("Alenco"), Project No. 48995</p> <p>Big Bend Telephone Company, Inc. ("BBT"), Project No. 49020</p> <p>Brazoria Telephone Company, Inc. ("BTCL"), Project No. 49024</p> <p>Central Texas Telephone Cooperative, Inc. ("CTTC"), Project No. 49000</p> <p>Dell Telephone Cooperative, Inc. ("Dell"), Project No. 49017</p> <p>Lake Livingston Telephone Company ("Lake Livingston"), Project No. 49012</p> <p>Lipan Telephone Company, Inc. ("Lipan"), Project No. 48984</p> <p>Livingston Telephone Company, Inc. ("LivCom"), Project No. 48991</p> <p>Southwest Texas Communications ("Southwest Texas"), Project No. 49026</p> <p>XIT Rural Telephone Cooperative, Inc. ("XIT"), Project No. 49010</p>	<p>Cameron Telephone Company ("Cameron"), Project No. 48985</p> <p>Electra Telephone Company, Inc. ("Electra"), Project No. 49001</p> <p>Tatum Telephone Company, Inc. ("Tatum"), Project No. 49007</p> <p>West Texas Rural Telephone Cooperative, Inc. ("WTRTC"), Project No. 48987</p>	6.27%	2.07%

	<p>Santa Rosa Telephone Cooperative, Inc. ("Santa Rosa"), Project No. 49006</p> <p>South Plains Telephone Cooperative, Inc. ("South Plains"), Project No. 48990</p> <p>Taylor Telephone Cooperative, Inc. ("Taylor"), Project No. 48989</p> <p>Totelcom Communications, LLC ("Totelcom"), Project No. 49008</p> <p>Valley Telephone Cooperative, Inc. ("Valley"), Project No. 49023</p> <p>West Plains Telecommunications, Inc. ("West Plains"); Project No. 49009</p> <p>Wes-Tex Telephone Cooperative, Inc. ("Wes-Tex"), Project No. 49022</p>				
2018	<p>Blossom, Project No. 50007</p> <p>Brazos, Project No. 49980</p> <p>Cap Rock, Project No. 49981</p> <p>Coleman, Project No. 49970</p> <p>Colorado Valley, Project No. 50008</p> <p>Community, Project No. 50002</p> <p>Cumby, Project No. 49997</p> <p>Eastex, Project No. 49961</p> <p>ENMR, Project No. 49978</p> <p>Etex, Project No. 50009</p> <p>FATC, Project No. 49977</p> <p>Ganado, Project No. 50005</p> <p>HCTC, Project No. 49994</p> <p>Industry, Project No. 49965</p> <p>La Ward, Project No. 50001</p> <p>LivCom, Project No. 49967</p> <p>Mid-Plains, Project No. 49966</p> <p>North Texas, Project No. 49987</p> <p>Peoples, Project No. 49986</p> <p>PLTC, Project No. 49968</p> <p>Riviera, Project No. 49995</p> <p>Santa Rosa, Project No. 49976</p> <p>South Plains, Project No. 49971</p> <p>Southwest Texas, Project No. 50000</p> <p>Taylor, Project No. 49964</p> <p>Totelcom, Project No. 49983</p> <p>West Plains, Project No. 49982</p> <p>Wes-Tex, Project No. 49969</p>	<p>Alenco, Project No. 49975</p> <p>BBT, Project No. 50003</p> <p>Border to Border, Project No. 50011</p> <p>BTEL, Project No. 49996</p> <p>CTTC, Project No. 49984</p> <p>Dell, Project No. 49988</p> <p>Lake Livingston, Project No. 49999</p> <p>Nortex, Project No. 49979</p> <p>Southwest Texas, Project No. 50000</p> <p>Valley, Project No. 50004</p> <p>XIT, Project No. 49985</p>	<p>Electra, Project No. 50010</p> <p>Cameron, Project No. 49962</p> <p>Lipan, Project No. 50010</p> <p>Tatum, Project No. 50012</p> <p>WTRTC, Project No. 50006</p>	6.42%	4.48%
2019	<p>Blossom, Project No. 51329</p> <p>Border to Border, Project No. 51314</p> <p>Brazos, Project No. 51300</p> <p>Cap Rock, Project No. 51299</p> <p>CTTC, Project No. 51327</p> <p>Coleman, Project No. 51307</p> <p>Colorado Valley, Project No. 51322</p> <p>Community, Project No. 51318</p> <p>Cumby, Project No. 51326</p> <p>Dell, Project No. 51305</p> <p>Eastex, Project No. 51278</p> <p>Electra, Project No. 51312</p>	<p>Alenco, Project No. 51302</p> <p>BBT, Project No. 51336</p> <p>ENMR, Project No. 51298</p> <p>Lake Livingston, Project No. 51308</p> <p>Nortex, Project No. 51315</p> <p>Southwest Texas, Project No. 51332</p> <p>Valley, Project No. 51330</p> <p>West Plains, Project No. 51297</p> <p>XIT, Project No. 51295</p>	<p>BTEL, Project No. 51336</p> <p>Cameron, Project No. 51331</p>	4.67%	3.28%

	Etex, Project No. 51291 FATC, Project No. 51296 Ganado, Project No. 51306 HCTC, Project No. 51319 Industry, Project No. 51324 La Ward, Project No. 51309 Lipan, Project No. 51292 LivCom, Project No. 51344 Mid-Plains, Project No. 51323 North Texas, Project No. 51317 Peoples, Project No. 51316 PLTC, Project No. 51325 Riviera, Project No. 51328 Santa Rosa, Project No. 51346 South Plains, Project No. 51293 Tatum, Project No. 51313 Taylor, Project No. 51335 Totalcom, Project No. 51320 WTRTC, Project No. 51333 Wes-Texas, Project No. 51294				
2020	Brazos, Project No. 52572 Cap Rock, Project No. 52585 CTTC, Project No. 52602 Coleman, Project No. 52579 Colorado Valley, Project No. 52562 Community, Project No. 52597 Cumby, Project No. 52600 Dell, Project No. 52584 Eastex, Project No. 52555 Electra, Project No. 52573 ENMR, Project No. 52574 Etex, Project No. 52559 FATC, Project No. 52576 Ganado, Project No. 52568 HCTC, Project No. 52596 Industry, Project No. 52566 La Ward, Project No. 52571 Lipan, Project No. 52567 LivCom, Project No. 52587 Mid-Plains, Project No. 52564 North Texas, Project No. 52589 Peoples, Project No. 52591 PLTC, Project No. 52560 Riviera, Project No. 52593 Santa Rosa, Project No. 52592 South Plains, Project No. 52563 Southwest Texas, Project No. 52603 Tatum, Project No. 52577 Taylor, Project No. 52599 Totalcom, Project No. 52590 Wes-Texas, Project No. 52561 XIT, Project No. 52580	Alenco, Project No. 52569 BBT, Project No. 52595 Blossom, Project No. 52598 Border to Border, Project No. 52570 Lake Livingston, Project No. 52575 Nortex, Project No. 52588 Valley, Project No. 52586 WTRTC, Project No. 52594	BTCL, Project No. 52601 Cameron, Project No. 52565 West Plains, Project No. 52578	3.47%	3.09%

**RORs as adjusted by Staff, if adjusted from reported levels.*

Appendix 2: Summary of SB 586 Adjustment Proceeding Dockets			
Report Year	Applicant Provider Name & Linked Dockets	Average ROR at Time of Filing	Average Projected ROR After Adjustment
2017	Mid-Plains, <u>Docket No. 50441</u> West Plains, <u>Docket No. 50492</u> Wes-Tex, <u>Docket No. 50491</u> Industry, <u>Docket No. 50486</u> Brazos, <u>Docket No. 50451</u> Cap Rock, <u>Docket No. 50416</u> Coleman, <u>Docket No. 50397</u> Riviera, <u>Docket No. 50287</u> Eastex, <u>Docket No. 50026</u> Etex, <u>Docket No. 50313</u> North Texas, <u>Docket No. 50336</u> Santa Rosa, <u>Docket No. 50286</u> Totelcom, <u>Docket No. 50339</u> HCTC, <u>Docket No. 50337</u> Peoples, <u>Docket No. 50208</u> Taylor, <u>Docket No. 50225</u> Community, <u>Docket No. 50338</u>	-3.89%	1.5%
2018	Blossom, <u>Docket No. 51165</u> FATC, <u>Docket No. 50956</u> Cumby, <u>Docket No. 50699</u> South Plains, <u>Docket No. 50658</u> Colorado Valley, <u>Docket No. 50610</u>	-1.49%	3.20%
2019	PLTC, <u>Docket No. 52638</u>	4.42%	6.75%
2020	CTTC, <u>Docket No. 53183</u> Southwest Texas, <u>Docket No. 53368</u> LivCom, <u>Docket No. 53402</u>	0.62%	Pending